

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action
)	No. 1:98-CV-2172
)	
MEDICAL MUTUAL OF OHIO,)	
)	
Defendant.)	
)	

FINAL JUDGMENT

Plaintiff, United States of America, filed its Complaint alleging violations of Section 1 of the Sherman Act, 15 U.S.C. §1, on September 23, 1998. Plaintiff and Defendant, by their respective attorneys, have consented to the entry of this Final Judgment without trial or final adjudication of any issue of fact or law. This Final Judgment shall not be evidence against any party or deemed an admission by any party of any issue of fact or law, nor shall it be deemed a determination that any violation of law has occurred. Therefore, before the taking of any trial testimony, without trial of any issue of fact or law, and upon consent of the parties, it is

ORDERED, ADJUDGED, AND DECREED, as follows:

I.

JURISDICTION

This Court has jurisdiction over the subject matter of this action and over each of the consenting parties. The Complaint states a claim upon which relief may be granted under Section 1 of the Sherman Act, 15 U.S.C. § 1.

II.

DEFINITIONS

As used herein, the term:

(A) "Cleveland Region" means Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, and Wayne Counties of the State of Ohio;

(B) "Defendant" or "Medical Mutual" means Medical Mutual of Ohio, its subsidiaries, divisions, successors, assigns, and each other entity directly or indirectly owned or controlled by it;

(C) "Hospital" means any entity in the Cleveland Region licensed to provide acute care in-patient services;

(D) "Hospital Agreement" means any agreement between Medical Mutual and a Hospital in the Cleveland Region for the provision of in-patient or out-patient hospital services to Medical Mutual's subscribers, and all amendments and additions to any such agreements;

(E) "Most Favorable Rates Requirement" means any policy, practice, rule, or contractual provision which (1) requires a Participating Hospital to charge any Third Party Payer as much as or more than the rate charged to Medical Mutual by such Participating Hospital, or

(2) requires a Participating Hospital to charge Medical Mutual rates equal to or lower than the lowest rate it charges any Third Party Payer;

(F) "Participating Hospital" means any Hospital in the Cleveland Region that has entered into a Hospital Agreement with Medical Mutual;

(G) "Third Party Payer" means any non-governmental entity, other than Medical Mutual, that pays for all or part of any expense for health care services provided by a Hospital to another person or group of persons.

III.

APPLICABILITY

This Final Judgment applies to Medical Mutual and all other persons (including all Participating Hospitals) in active concert or participation with it who have received actual notice of the Final Judgment by personal service or otherwise.

IV.

PROHIBITED CONDUCT

Medical Mutual is enjoined and restrained from:

(A) adopting, maintaining, or enforcing in the Cleveland Region a Most Favorable Rates Requirement or any policy, practice, rule, or contractual provision having the same purpose or effect;

(B) adopting, maintaining, or enforcing any policy, practice, or agreement that requires a Participating Hospital to disclose to Medical Mutual, directly or indirectly, through audit or any other means, the rates such Hospital offers or charges any Third Party Payer(s), except as necessary for coordination of benefits in connection with specific claims.

V.

PERMITTED ACTIVITIES

Provided that such activities do not violate any provision of Section IV, nothing herein shall be construed to prohibit Medical Mutual from:

(A) negotiating for or obtaining rate arrangements, reimbursement levels, or payment methodologies with any Participating Hospital, whether on an overall or product line basis, including negotiating for or obtaining the lowest rate(s) or largest discount(s) from any Participating Hospital;

(B) receiving or accepting information regarding the rates a Hospital offers or charges any Third Party Payer so long as the Hospital provides such information without any request from Medical Mutual and without any offer or promise of consideration for such information from Medical Mutual;

(C) establishing preferred provider networks, other forms of provider panels, or alternative delivery systems;

(D) recruiting hospitals who have contracts with or are participating in hospital networks or panels of Third Party Payers;

(E) having different rate arrangements, reimbursement levels, or payment methodologies for different product lines, for different hospitals, or for different networks or panels of hospitals;

(F) declining or refusing to contract or do business with any hospital, or terminating any hospital agreement.

VI.

NULLIFICATION

All Most Favorable Rates Requirements in the Cleveland Region are hereby declared null and void and shall impose no obligation on any Participating Hospital.

VII.

COMPLIANCE MEASURES

Medical Mutual shall:

(A) distribute, within 60 days of the entry of this Final Judgment, a copy of this Final Judgment to: (1) all of Medical Mutual's officers and trustees; and (2) all of Medical Mutual's employees and agents who are responsible for negotiating, approving, disapproving, or enforcing any Hospital Agreement, except employees and agents primarily involved in the administration of payments to and collections from Hospitals;

(B) distribute in a timely manner a copy of this Final Judgment to any officer, trustee employee, or agent who succeeds to a position described in Section VII(A);

(C) obtain from each present or future officer, trustee, employee, or agent designated in Section VII(A), within 60 days of entry of this Final Judgment or of the person's succession to a designated position, a written certification that he or she: (1) has read, understands, and agrees to abide by the terms of this Final Judgment; and (2) has been advised and understands that his or her failure to comply with this Final Judgment may result in conviction for criminal contempt of court;

(D) maintain a record of persons to whom the Final Judgment has been distributed and from whom, pursuant to Section VII(C), the certification has been obtained;

(E) distribute, within 60 days of the entry of this Final Judgment, a copy of this Judgment, by first-class mail, to all currently Participating Hospitals;

(F) provide a copy of this Final Judgment to any Hospital in the Cleveland Region not covered by Section VII (E) with which Medical Mutual enters into negotiations for a Hospital Agreement after the effective date of this Judgment;

(G) promptly report to the Plaintiff any violation of the Final Judgment.

VIII.

CERTIFICATION

(A) Within 75 days of the entry of this Final Judgment, Medical Mutual shall certify to the Plaintiff that it has: (1) distributed the Final Judgment in accordance with Section VII(A) and (E); and (2) obtained certifications in accordance with Section VII(C).

(B) For ten years after the entry of this Final Judgment, on or before its anniversary date, Medical Mutual shall file with the Plaintiff an annual Declaration as to the fact and manner of its compliance with the provisions of Sections IV, VI, and VII.

IX.

PLAINTIFF'S ACCESS TO INFORMATION

(A) To determine or secure compliance with this Final Judgment, duly authorized representatives of the Plaintiff, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Medical Mutual made to its principal office, shall be permitted, subject to any legally recognized privilege:

- (1) access during Medical Mutual's office hours to inspect and copy all documents in the possession or under the control of Medical Mutual, which may have counsel present, relating to any matters contained in this Final Judgment; and
- (2) subject to the reasonable convenience of Medical Mutual and without restraint or interference from it, to interview officers, trustees, employees, or agents of Medical Mutual, who may have Medical Mutual's counsel and/or their own counsel present, regarding such matters.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to Medical Mutual's principal office, Medical Mutual shall submit such written reports, under oath if requested, relating to any matters contained in this Final Judgment as may be reasonably requested, subject to any legally recognized privilege.

(C) Medical Mutual shall have the right to be represented by counsel in any process under this Section.

(D) No information or documents obtained by the means provided in Section IX shall be divulged by the Plaintiff to any person other than duly authorized representatives of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(E) If at the time information or documents are furnished by Medical Mutual to Plaintiff, Medical Mutual represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of

the Federal Rules of Civil Procedure, and Medical Mutual marks each pertinent page of such material, "subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by Plaintiff to Medical Mutual prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Medical Mutual is not a party.

(F) Nothing in this Final Judgment prohibits the Plaintiff from using any other investigatory method authorized by law.

X.

FURTHER ELEMENTS OF THE FINAL JUDGMENT

(A) This Final Judgment shall expire ten years from the date of its entry.

(B) Jurisdiction is retained by this Court for the purpose of enabling either of the parties to this Final Judgment, but no other person, to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment; to modify or terminate any of its provisions, based on changed circumstances of fact or law warranting such action; to enforce compliance; or to punish violations of its provisions.

(C) The Court finds that this Final Judgment is in the public interest.

_____/s/_____
United States District Judge

Dated: January 29, 1999